

IN THE HIGH COURT OF KARNATAKA : AT BANGALORE

DATED : 30TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR. JUSTICE K.H.N. KURANGA

C.R.P. NO. 799 OF 1998

Between:

Venkataramanappa,  
S/o Peddadeppa,  
Aged 52 years,  
Yellampalli village,  
Kasaba Hobli,  
Bagepalli Taluk,  
Kolar District.

Petitioner

(By Sri A. Nagarajappa,  
Advocate for petitioner)

And:

Jayarama Reddy,  
S/o Kasandram,  
Narasimha Reddy,  
aged about 40 years,  
Yellampalli,  
Bagepalli Taluk,  
Kolar District.

Respondent

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This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order dated 17-12-1997 passed in O.S.No.12 of 1995 on the file of the Civil Judge (Jr. Dn.) and JMFC, Bagepalli, dismissing I.A.No.4 filed under Order 26 Rule 9 of the Code of Civil Procedure.

This petition is coming on for admission, this day, the Court made the following:-

ORDER

The petitioner is the plaintiff in O.S. No.12 of 1995 on the file of the Civil Judge (Jr. Dn.) Bagepalli. He has in this petition, challenged the order dated 17-12-1997 passed by the court below on I.A. No.4 in the said suit.

2. The petitioner filed I.A.No.4 under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure for appointment of ADLR Survey Court Commissioner for local inspection of the property.

3. The petitioner filed the said suit against the defendant for declaration and permanent injunction in respect of 1 acre 38 guntas of land of Yellampalli village, Bagepalli Taluk.

4. The case of the defendant is that the plaintiff is not the owner of the property and he is not in possession of the same.

5. The prayer of the petitioner in the application I.A.No.4 is for appointment of the Court Commissioner for demarcating, locating

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and fixing the boundaries of the suit property on the ground that the defendant is denying the situation of the bore well in the land. The suit is not filed in respect of the boundaries of the suit schedule property and it is not the case of the plaintiff that the defendant has encroached on his property. The petitioner has not produced any material to show that the property in question was phoded or demarcated at any time by the Survey Department. Therefore, the court below has held that in a suit filed by the petitioner for declaration and permanent injunction appointment of Court Commissioner is not necessary and dismissed the application I.A.No.4.

6. The order passed by the court below, in <sup>is proper and it</sup> the facts and circumstances of the case <sup>✓</sup> does not call for interference and it is not a fit case for admission and it is liable to be dismissed and accordingly, it is dismissed.

Sd/-  
JUDGE

KBN/-